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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/027,867	02/23/1998	FRANCIS C. CARROLL	2734-CIP-Z	3765

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EXAMINER

PATTERSON, MARIE D

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 07/02/2002

#31

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/027,867

Applicant(s)

CARROLL, FRANCIS C.

Examiner

Marie Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-35 and 38-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38 is/are allowed.
- 6) ☒ Claim(s) 31-35, 39, and 41-43 is/are rejected.
- 7) ☒ Claim(s) 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Claim Rejections - 35 USC § 112

1. Claims 31, 32, 35, and 41-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 32, 35, 41, and 42 the phrase “said main body” lacks antecedent basis rendering the claim vague and indefinite.

In claim 41 the phrase “said outer traction surface and having an outward...” is confusing, vague, and indefinite.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 42 is rejected under 35 U.S.C. 102(b) as being anticipated by Matulla (German patent 3811513).

Matulla shows a cleat as claimed, see figures 1a and 1.

4. Claim 41 is rejected under 35 U.S.C. 102(b) as being anticipated by Bouyer (French patent 2679421).

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Bouyer shows a cleat with a mounting member (2) and a plurality of traction teeth (3) which project outwardly (i.e. out from the base), have an outer traction surface (all surfaces 6, 6A, and 6B), and the outer traction surface (the surfaces 6A and 6B) having an outward angulation.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 33, 39, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Softspikes (A unique Holiday Offer article) or Bouyer in view of either Howard (2095095) or Matulla (German patent 3811513).

Softspikes shows a cleat with a threaded stud and a plurality of peripheral teeth substantially as claimed except for the perimeter traction teeth having an outer traction surface facing away from the axis of the threaded stud which is angled outwardly and an axis which is angled outwardly from the axis of the stud. Bouyer shows a cleat with a main body (1), a plurality of perimeter traction teeth (3), and a threaded stud (2) substantially as claimed except for the perimeter traction teeth having an outer traction surface facing away from the axis of the threaded stud which is angled outwardly and an axis which is angled outwardly from the axis of the stud.. Howard or Matulla teaches outwardly angling the outer traction surface which faces away from the axis of the threaded stud to increase traction and to ensure against lateral slipping. It would

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have been obvious to outwardly angle the outwardly facing surface of the plurality of traction teeth as taught by either Howard or Matulla in the cleat of either Softspikes or Bouyer to increase traction and to prevent lateral slipping.

7. Claims 31, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 33, 39, 41, and 42 above, and further in view of either Kelly or Jordan '114

Softspikes or Bouyer as modified above shows a cleat substantially as claimed except for an anti-debris ring. Kelly or Jordan '114 teaches providing an anti-debris ring (24 or 7). It would have been obvious to provide an anti-debris ring as taught by either Kelly or Jordan in the cleat of Softspikes or Bouyer as modified above to prevent debris from getting between the cleat body and the shoe sole.

8. Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dassler (4375728) in view of Jordan (4014114).

Dassler shows a cleat comprising a body member (14), a plurality of teeth (2-4) which are outwardly angled from a central axis of the body member substantially as claimed except for the body member being detachably connected to a sole of a shoe. Jordan teaches making a cleat comprising a body with a plurality of teeth detachably connected by providing a mounting member (9) on the body member and also teaches providing an anti-debris ring (7). It would have been obvious to provide a detachable mounting means as taught by Jordan '114 on the cleat of

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Dassler '728 to allow the user to replace worn or broken cleats, change cleats for different sports, etc..

In reference to claim 43, Dassler '728 teaches the angle of the teeth to be 10 and 80 degrees (column 55-57).

Allowable Subject Matter

9. Claim 38 is allowed.
10. Claim 40 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
11. Claim 32 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Response to Arguments

12. Applicant's arguments filed 6/7//02 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards Matulla, Matulla clearly shows outwardly angled outer surface of projections in figure 1a and the teeth are considered to be "low profile" inasmuch as applicant has defined such in the claims. In reference to the intended use of the cleat, i.e. golfing, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a

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prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2

USPQ2d 1647 (1987). It is noted that claim 42 does not require a circular array as argued. The outer traction surfaces of Matulla are clearly angled outwardly as shown in figures figure I and II.

In response to applicants' arguments directed towards Bouyer, Claim 41 does now require that the angled surface be facing away from the axis AL.

In response to applicants' arguments directed towards Kelly and Jordan, these arguments are not understood and are not persuasive especially because Kelly and Jordan show the exact same structure as applicant shows as an anti-debris ring. It is not clear how applicants structure can function as an anti-debris ring, but the exact same structure shown by Kelly or Jordan does not.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there

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is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA) 1969. In this case, Howard clearly discloses and teaches angling projections as an alternative position (as well as no angulation or angling the teeth inwards) for traction teeth on a detachable main body portion which is detachably attached to a shoe sole. Matulla clearly shows outwardly angled teeth around the perimeter of a main body. It would have been obvious to angle projections as taught by Howard or Matulla in any detachable main body with teeth around the perimeter of the main body as an alternative to the vertical or inwardly angled position and to increase transverse traction.

In response to applicants' arguments directed towards the combination of Dassler '728 and Jordan '114, Dassler clearly shows a cleat comprising a main body with a plurality of angled teeth as claimed except for making the cleat detachable. Jordan clearly teaches one means for making traction cleats detachable.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


1. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the Tech Center 3700 Customer Service Center number is (703) 306-5648.

For applicant's convenience, the Group Technological Center FAX number is (703)872-9302 Please identify Examiner____ of Art Unit ____ at the top of your cover sheet of any correspondence submitted. Please note that the Examiner is unable to confirm or deny receipt of Faxes.

Inquiries concerning the merits of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to Valerie Douglas at (703) 308-1337.

Check out our web-site at "www.uspto.gov" for fees and other useful information.


Marie Patterson
Primary Examiner
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